



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 16, 1998

Mr. Martin Keith  
Office of the City Attorney  
City of San Antonio  
P.O. Box 829966  
San Antonio, Texas 78283-3966

OR98-2698

Dear Mr. Keith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119522.

The City of San Antonio (the "city") received a request for "any and all documents that have been filed by US Telecom with respect to the Request for Proposal for telecommunication services and video network services at the Henry B. Gonzalez Convention Center." In response to the request, you submit to this office for review the information which you assert is responsive. On behalf of Facilities Communication International, Ltd. (d/b/a "US Telecom"), you assert that the requested documents are excepted from disclosure under sections 552.104 and 552.110 of the Government Code, as well as section 252.049 of the Government Code. Pursuant to section 552.305, U.S. Telecom has advised this office that "[t]he financial records identified as 'Confidential' in US Telecom's proposal should be exempt from disclosure pursuant to section 552.110."<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered the exceptions and arguments you raise and have reviewed the submitted records.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations, prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. Open Records Decision No. 541 at 4 (1990).

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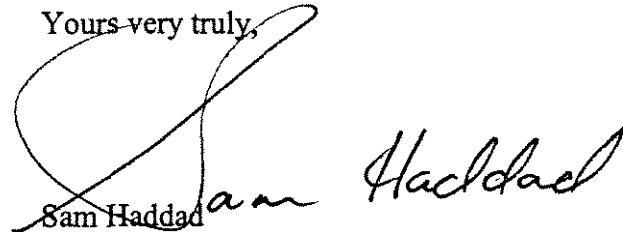
<sup>1</sup>We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

You state that "the selection process for telecommunications services is not yet complete." Based on your representation, we conclude that you may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once the bidding process is completed, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 at 5 (1990).

In addition, once the bidding process is completed and section 552.104 is no longer applicable, should there be a subsequent request for this same information, we advise the city to seek a ruling from this office since the submitted information may implicate the property and privacy rights of a third party. *See* Gov't Code §§ 552.110, 552.305.

As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 119522

Enclosures: Submitted documents

cc: Mr. Carlos Resendez  
The Resendez Group  
4414 Centerview  
San Antonio, Texas 78228  
(w/o enclosures)

Mr. Frank B. Burney  
Martin, Drought & Torres  
300 Convent Street  
2500 NationsBank Plaza  
San Antonio, Texas 78205  
(w/o enclosures)